

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, :
et al., :
 :
Plaintiffs :
 :
v. : No. 1:23-cv-00108
 :
GOOGLE, LLC, :
 :
Defendants. :

Friday, August 18, 2023

Video Deposition of COL. JOHN HORNING,
taken at the Law Offices of Paul, Weiss,
Rifkind, Wharton & Garrison LLP, 2001 K St NW,
Washington, DC, beginning at 9:34 a.m. Eastern
Standard Time, before Ryan K. Black, Registered
Professional Reporter, Certified Livenote
Reporter and Notary Public in and for the
District of Columbia


Job No. CS6060378

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 UNITED STATES DEPARTMENT OF JUSTICE</p> <p>4 ANTITRUST DIVISION</p> <p>5 BY: JIMMY MCBIRNEY, ESQ.</p> <p>6 CHASE PRITCHETT, ESQ.</p> <p>7 ALVIN CHU, ESQ.</p> <p>8 MARK SOSNOWSKY, ESQ. - Via Zoom</p> <p>9 KATHERINE CLEMONS, ESQ - Via Zoom</p> <p>10 450 5th Street, N.W</p> <p>11 Washington, DC 20530</p> <p>12 202.514.2414</p> <p>13 jimmy.mcbirney@usdoj.gov</p> <p>14 chase.pritchett@usdoj.gov</p> <p>15 alvin.chu@usdoj.gov</p> <p>16 mark.sosnowsky@usdoj.gov</p> <p>17 katherine.clemons@usdoj.gov</p> <p>18 Representing - The United States of America</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP,</p> <p>24 BY: MARTHA L. GOODMAN, ESQ.</p> <p>25 LEAH HIBBLER, ESQ.</p> <p>2001 K St NW,</p> <p>Washington, DC</p> <p>202.223.7341</p> <p>mgoodman@paulweiss.com</p> <p>lhibbler@paulweiss.com</p> <p>Representing - Google LLC</p> <p>ALSO PRESENT:</p> <p>Glenn Fortner - Legal Videographer</p> <p>Major Mohamed Al-Darsani - United States Army</p> <p>Edwin Farley - USDOJ Intern</p>	<p style="text-align: right;">Page 4</p> <p>1 THE VIDEOGRAPHER: Good morning.</p> <p>2 We're going on the record at 9:34 on August 18th,</p> <p>3 2023. Please note that the microphones are</p> <p>4 sensitive and may pick up whispering and private</p> <p>5 conversations. Please mute your phones at this</p> <p>6 time. Audio and video recording will continue to</p> <p>7 take place unless all parties agree to go</p> <p>8 off the record.</p> <p>9 This is Media Unit 1 of the</p> <p>10 video-recorded deposition of Colonel John Horning</p> <p>11 in the matter of United States, et al., v. Google</p> <p>12 LLC. The location of the deposition is Paul</p> <p>13 Weiss.</p> <p>14 My name is Glenn Fortner, representing</p> <p>15 Veritext, and I'm the videographer. The court</p> <p>16 reporter is Ryan Black from the firm Veritext.</p> <p>17 I'm not related to any party in this action, nor</p> <p>18 am I financially interested in the outcome.</p> <p>19 If there are any objections to</p> <p>20 proceeding, please state them at the time of your</p> <p>21 appearance. Counsel and all present, including</p> <p>22 remotely, will now state their appearances and</p> <p>23 affiliations for the record beginning with the</p> <p>24 noticing attorney.</p> <p>25 MS. GOODMAN: Martha Goodman, from the</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2 TESTIMONY OF: COL. JOHN HORNING PAGE</p> <p>3 By Ms. Goodman.....6, 244</p> <p>4 By Mr. McBirney.....245</p> <p>5 EXHIBITS</p> <p>6 EXHIBIT DESCRIPTION PAGE</p> <p>7 Exhibit 61 a privilege log dated June 26th,</p> <p>8 2023, provided by the United</p> <p>9 States DOJ.....11</p> <p>10 Exhibit 62 a document Bates Numbered</p> <p>11 ARMY-ADS336340 through 336638...154</p> <p>12 Exhibit 63 a document Bates Numbered</p> <p>13 ARMY-ADS329948 through 329970...165</p> <p>14 Exhibit 64 a document Bates Numbered</p> <p>15 ARMY-ADS187047 through 187077...211</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 law firm Paul Weiss, on behalf of Google LLC.</p> <p>2 I'm joined by my colleague Leah Hibbler.</p> <p>3 MR. MCBIRNEY: Jimmy McBirney, with the</p> <p>4 Unites Staes Department of Justice, on behalf of</p> <p>5 the United States and the witness.</p> <p>6 MR. PRITCHETT: Chase Pritchett, on</p> <p>7 behalf of the United States.</p> <p>8 MR. CHU: Alvin Chu on behalf of the</p> <p>9 United States.</p> <p>10 MR. SOSNOWSKY: Mark Sosnowsky on behalf</p> <p>11 of the United States.</p> <p>12 MAJOR AL-DARSANI: Moe Al-Darsani,</p> <p>13 United States Army.</p> <p>14 MR. FARLEY: Edwin Farley, United</p> <p>15 States.</p> <p>16 THE VIDEOGRAPHER: Okay. Will the court</p> <p>17 reporter please swear in the witness and then</p> <p>18 counsel may proceed.</p> <p>19 MR. CHU: Oh, also, just to let you</p> <p>20 know, I have Katherine Clemons -- she'll be --</p> <p>21 from the DOJ that will also joining in and out.</p> <p>22 * * *</p> <p>23 Whereupon --</p> <p>24 COL. JOHN HORNING,</p> <p>25 called to testify, having been first duly sworn</p>

<p style="text-align: right;">Page 6</p> <p>1 or affirmed, was examined and testified as</p> <p>2 follows:</p> <p>3 * * *</p> <p>4 EXAMINATION</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. Good morning, Colonel Horning.</p> <p>7 A. Good morning.</p> <p>8 Q. Have you been deposed before?</p> <p>9 A. I have not.</p> <p>10 Q. Do you understand your purpose here</p> <p>11 today is to provide truthful and accurate</p> <p>12 testimony to the best of your testimony and</p> <p>13 knowledge?</p> <p>14 A. I do.</p> <p>15 Q. Is there any reason you cannot do that</p> <p>16 today?</p> <p>17 A. No.</p> <p>18 Q. Okay. Because the court reporter is</p> <p>19 writing everything down, it's important that we</p> <p>20 not talk over one another, so please let me</p> <p>21 finish my question before you begin your answer.</p> <p>22 Okay?</p> <p>23 A. Okay.</p> <p>24 Q. And because he's again taking a written</p> <p>25 transcript, the -- you have to speak verbally as</p>	<p style="text-align: right;">Page 8</p> <p>1 that.</p> <p>2 Q. Have you ever requested legal advice</p> <p>3 from the Department of Justice Antitrust</p> <p>4 Division?</p> <p>5 MR. MCBIRNEY: Objection. Calls for</p> <p>6 privileged information. Instruct the witness not</p> <p>7 to answer.</p> <p>8 MS. GOODMAN: You're asking him -- the</p> <p>9 information that would appear on a privilege log</p> <p>10 with a request for legal advice that's required</p> <p>11 for you as the privilege -- the party asserting a</p> <p>12 privilege to establish the proprietary of the</p> <p>13 privilege and meet your burden of proof and</p> <p>14 persuasion that the privilege applies, you're</p> <p>15 instructing him not to answer that question?</p> <p>16 MR. MCBIRNEY: You are asking the</p> <p>17 witness whether he has requested legal advice</p> <p>18 from the Department of Justice Antitrust</p> <p>19 Division?</p> <p>20 MS. GOODMAN: Yeah.</p> <p>21 MR. MCBIRNEY: You can answer that yes</p> <p>22 or no.</p> <p>23 THE WITNESS: No.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. To what extent has anybody at the</p>
<p style="text-align: right;">Page 7</p> <p>1 opposed to with sounds like uh-huh or huh-uh</p> <p>2 so that it can be accurately reflected in the</p> <p>3 transcript. Okay?</p> <p>4 A. I understand.</p> <p>5 Q. If you don't understand my question,</p> <p>6 please let me know. Okay?</p> <p>7 A. Yes.</p> <p>8 Q. Otherwise I assume you'll understand.</p> <p>9 Okay?</p> <p>10 A. Yes.</p> <p>11 Q. In the normal course of your work, do</p> <p>12 you consider the Department of Justice Antitrust</p> <p>13 Division to be your counsel?</p> <p>14 A. I'm not sure that I'm qualified to</p> <p>15 answer, within the legal constructs of the U.S.</p> <p>16 government, who our actual counsel is or is not.</p> <p>17 Q. I'm not asking for you to provide a</p> <p>18 legal opinion. I'm asking for your personal</p> <p>19 understanding and your considerations, your</p> <p>20 personal opinions. So do you consider the</p> <p>21 Department of Justice Antitrust Division to be</p> <p>22 your counsel in the normal course of your work?</p> <p>23 A. I don't believe that I have a personal</p> <p>24 opinion on who our counsel is. I only know</p> <p>25 what's -- yeah. I -- I don't have an opinion on</p>	<p style="text-align: right;">Page 9</p> <p>1 Department of Justice ever asked you to provide</p> <p>2 information about the Army's advertising</p> <p>3 business?</p> <p>4 MR. MCBIRNEY: Objection. Privileged.</p> <p>5 Instruct the witness not to answer.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Are you going to follow that</p> <p>8 instruction, sir?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. When did you first have any</p> <p>11 conversations with anybody at the Department of</p> <p>12 Justice Antitrust Division?</p> <p>13 A. As best that I can recall, our first</p> <p>14 interaction would have been in early spring of</p> <p>15 2023 or late winter. I -- I can't recall the</p> <p>16 specific date.</p> <p>17 Q. So sometime between late winter of what</p> <p>18 year?</p> <p>19 A. 2023.</p> <p>20 Q. Okay. And early spring of 2023?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. What was your understanding</p> <p>23 of the reason for your conversations with the</p> <p>24 Department of Justice Antitrust Division?</p> <p>25 MR. MCBIRNEY: Objection. Calls for</p>

<p style="text-align: right;">Page 10</p> <p>1 privileged information. Instruct the witness not</p> <p>2 to answer.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Are you following that instruction?</p> <p>5 A. Yes.</p> <p>6 Q. Has the Department of Justice ever</p> <p>7 requested information about digital advertising</p> <p>8 purchases by the United States Army?</p> <p>9 MR. MCBIRNEY: Objection. Calls for</p> <p>10 privileged information. Instruct the witness not</p> <p>11 to answer.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Are you following that instruction?</p> <p>14 A. Yes.</p> <p>15 Q. Do you -- in the course of your work,</p> <p>16 do you routine -- do you field requests for</p> <p>17 information from the Department of Justice on</p> <p>18 an ordinary basis?</p> <p>19 A. I do not.</p> <p>20 Q. Are you aware of anybody else within</p> <p>21 the AEMO who re -- regularly fields requests for</p> <p>22 information from the Department of Justice?</p> <p>23 A. I'm not personally aware of anything</p> <p>24 like that.</p> <p>25 MS. GOODMAN: I'm marking Exhibit 61, a</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. I'm sorry. I meant Page 11.</p> <p>2 A. Okay.</p> <p>3 Q. It's line entry 23 on Page 11.</p> <p>4 A. Okay.</p> <p>5 Q. So one, two, three, four, five columns</p> <p>6 over, you're listed in the To column. Do you see</p> <p>7 that?</p> <p>8 A. I do.</p> <p>9 Q. And do you see the date in the few-more</p> <p>10 columns over of January 5th, 2023?</p> <p>11 A. Okay.</p> <p>12 Q. Does that refresh your recollection of</p> <p>13 the time period where you first had conversations</p> <p>14 with the Department of Justice Antitrust</p> <p>15 Division?</p> <p>16 A. Can you help me understand what it is</p> <p>17 I'm actually looking at here?</p> <p>18 Q. Yeah. So this is what's called a</p> <p>19 privilege log.</p> <p>20 A. I'm not familiar with what one of those</p> <p>21 are.</p> <p>22 Q. Okay. A privilege log is a</p> <p>23 document that parties are required to provide</p> <p>24 to the opposing side when they're asserting</p> <p>25 attorney-client or attorney work product or other</p>
<p style="text-align: right;">Page 11</p> <p>1 privilege log dated June 26th, 2023, provided by</p> <p>2 the United States in this litigation. I'm</p> <p>3 handing it to the witness.</p> <p>4 (Exhibit No. 61, a privilege log dated</p> <p>5 June 26th, 2023, provided by the United States</p> <p>6 DOJ, was introduced.)</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Now, Colonel Horning, this is not a</p> <p>9 document I would normally show a percipient</p> <p>10 witness, but I'm essentially hamstrung and must</p> <p>11 do so here today for reasons that don't pertain</p> <p>12 to you, per se. But I would like you to turn to</p> <p>13 Page 11 of this document.</p> <p>14 Let me know when you're there.</p> <p>15 A. Okay. I am on Page 11.</p> <p>16 Q. Okay. And if you look back at Page 1,</p> <p>17 actually, you see there is a heading at the top</p> <p>18 that indicate what each of the columns are.</p> <p>19 A. Okay.</p> <p>20 Q. Okay. So you see that in the, one, two,</p> <p>21 three, four, five -- fifth column over on Page</p> <p>22 23, which is the To column, your name is</p> <p>23 listed --</p> <p>24 A. On? I'm sorry. Could you say what page</p> <p>25 again? I thought you said Page 23.</p>	<p style="text-align: right;">Page 13</p> <p>1 privilege over communications --</p> <p>2 A. Okay.</p> <p>3 Q. -- that they are not providing to</p> <p>4 the other side in litigation. So that's what a</p> <p>5 privilege log is. And so by virtue of this</p> <p>6 entry, on Line 23 the United States is asserting</p> <p>7 a privilege, as described in the last column, --</p> <p>8 A. Okay.</p> <p>9 Q. -- over your communication with</p> <p>10 Mr. Wessels and others --</p> <p>11 A. Okay.</p> <p>12 Q. -- listed on this page.</p> <p>13 A. Okay.</p> <p>14 Q. Do you understand now?</p> <p>15 MR. MCBIRNEY: Objection. Assumes facts</p> <p>16 not in evidence. Form of the question.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Do you understand -- do you have an</p> <p>19 appropriate understanding now of what a privilege</p> <p>20 log is?</p> <p>21 A. I do understand what this document is</p> <p>22 now.</p> <p>23 Q. Okay. So having now looked at this</p> <p>24 document and understanding what it is, does it</p> <p>25 refresh your memory at all that -- as to the</p>

<p style="text-align: right;">Page 14</p> <p>1 timing of your conversations with the Antitrust 2 Division? 3 MR. MCBIRNEY: Objection; foundation, 4 and to form. 5 THE WITNESS: It does not refresh my 6 recollection, but I have no reason to believe 7 this is not true. 8 BY MS. GOODMAN: 9 Q. Okay. And you see in the column next to 10 the date, which is the subject -- if you look 11 back at Page 1, you can see that that is the 12 subject column. 13 A. Yes. 14 Q. Okay. Can you read the subject to me 15 here? 16 A. The subject on Item 23 of the privilege 17 log says, brackets, "external DOJ-Army interview 18 on Google-Meta advertising products used by DOD." 19 Q. Okay. Do you recall who was interviewed 20 -- who at the Army was interviewed on Google-Meta 21 advertising products used by DOD on or around 22 this date of January 5th, 2023? 23 MR. MCBIRNEY: You can answer that yes 24 or no. 25 THE WITNESS: I do not recall.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. What was your understanding of the 2 purpose of the interview? 3 MR. MCBIRNEY: Objection. Calls for 4 privileged information. Instruct the witness not 5 to answer. 6 BY MS. GOODMAN: 7 Q. Are you following that instruction? 8 A. Yes. 9 Q. What facts -- strike that. 10 At the time reflected here on this 11 log, -- 12 A. Mm-hmm. 13 Q. -- January 5th, 2023, were you aware of 14 any anticompetitive conduct on the part of Google 15 affecting the Army's advertising -- 16 MR. MCBIRNEY: Objection. 17 BY MS. GOODMAN: 18 Q. -- practices? 19 MR. MCBIRNEY: Objection. Calls for a 20 legal conclusion. 21 BY MS. GOODMAN: 22 Q. You may answer. 23 A. I'm not sure that I have -- am 24 qualified to know or would have been made 25 available any infor -- or would have had any</p>
<p style="text-align: right;">Page 15</p> <p>1 BY MS. GOODMAN: 2 Q. Okay. Do you recall yourself being 3 interviewed on this topic? 4 A. I recall being interviewed, but I do not 5 recall that this was the date for it. 6 Q. Okay. Do you recall who interviewed 7 you? 8 A. I only recall -- I didn't -- there was 9 likely more than one person. I only recall one 10 by name. 11 Q. Who do you recall by name? 12 A. Mr. Chase Pritchett. 13 Q. Okay. How long did the interview last? 14 A. I can't be certain. I think it was, 15 likely, 60 to 90 minutes, perhaps. 16 Q. And this is a yes or no question: Did 17 the United States Antitrust Division lawyers 18 present explain to you the purpose of the 19 interview? 20 MR. MCBIRNEY: Objection. Calls for 21 privileged communication. Instruct the witness 22 not to answer. 23 BY MS. GOODMAN: 24 Q. Are you following that instruction? 25 A. Yes.</p>	<p style="text-align: right;">Page 17</p> <p>1 information available to me on that topic. 2 Q. Around this time of January 5th, 2023, 3 were you aware of any conduct on the part of 4 Google that was causing the Army to pay prices 5 for advertising that were too high? 6 A. I had not been made aware of anything 7 like that at the time frame that you're asking. 8 Q. Okay. How about prior to the time frame 9 that I'm asking? 10 A. Not that I can recall, no. 11 Q. Okay. What's your understanding of the 12 word anticompetitive? 13 MR. MCBIRNEY: Objection. Calls for 14 legal conclusion, and foundation. 15 THE WITNESS: I only know the common 16 language terminology. I don't understand the 17 actual legal definitions or implications. 18 Anticompetitive: Not competitive. 19 BY MS. GOODMAN: 20 Q. So what is your common language 21 understanding of the word anticompetitive? 22 A. I understand it in the context of 23 business practices meaning not adhering to a 24 competitive, fair practice. 25 Q. Okay. So using your definition of</p>

<p style="text-align: right;">Page 246</p> <p>1 for information relevant to this lawsuit?</p> <p>2 A. I did not.</p> <p>3 MS. GOODMAN: I reserve the remainder of</p> <p>4 my time for this deposition based on the improper</p> <p>5 privilege assertions made at the outset of the</p> <p>6 deposition. So I close the dep -- I'm holding</p> <p>7 the deposition open.</p> <p>8 MR. MCBIRNEY: Can I get a time check?</p> <p>9 THE VIDEOGRAPHER: We are at 5:55</p> <p>10 minutes.</p> <p>11 MR. MCBIRNEY: Okay. The government</p> <p>12 does not agree with your position that the</p> <p>13 deposition should remain open, but we understand</p> <p>14 your position.</p> <p>15 MS. GOODMAN: Okay.</p> <p>16 MR. MCBIRNEY: Off the record.</p> <p>17 THE VIDEOGRAPHER: Anything else for the</p> <p>18 record?</p> <p>19 MS. GOODMAN: Thank you, Colonel.</p> <p>20 THE WITNESS: Thank you very much.</p> <p>21 THE VIDEOGRAPHER: This marks the end of</p> <p>22 the deposition of Colonel John Horning. We're</p> <p>23 going off the record at 1753.</p> <p>24 (Deposition concluded -- 5:53 p.m.)</p> <p>25</p>	<p style="text-align: right;">Page 248</p> <p>1 Jimmy McBirney, Esq.</p> <p>2 jimmy.mcbirney@usdoj.gov</p> <p>3 August 21, 2023</p> <p>4 RE: United States, Et Al v. Google, LLC</p> <p>5 8/18/2023, John Horning (#6060378)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 erratas-cs@veritext.com</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 247</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 I do hereby certify that I am a Notary</p> <p>4 Public in good standing, that the aforesaid</p> <p>5 testimony was taken before me, pursuant to</p> <p>6 notice, at the time and place indicated; that</p> <p>7 said deponent was by me duly sworn to tell the</p> <p>8 truth, the whole truth, and nothing but the</p> <p>9 truth; that the testimony of said deponent was</p> <p>10 correctly recorded in machine shorthand by me and</p> <p>11 thereafter transcribed under my supervision with</p> <p>12 computer-aided transcription; that the deposition</p> <p>13 is a true and correct record of the testimony</p> <p>14 given by the witness; and that I am neither of</p> <p>15 counsel nor kin to any party in said action, nor</p> <p>16 interested in the outcome thereof.</p> <p>17</p> <p>18 WITNESS my hand and official seal this</p> <p>19 21st day of</p> <p>20 </p> <p>21</p> <p>22 Notary Public</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 249</p> <p>1 United States, Et Al v. Google, LLC</p> <p>2 John Horning (#6060378)</p> <p>3 E R R A T A S H E E T</p> <p>4 PAGE____ LINE____ CHANGE____</p> <p>5 _____</p> <p>6 REASON_____</p> <p>7 PAGE____ LINE____ CHANGE____</p> <p>8 _____</p> <p>9 REASON_____</p> <p>10 PAGE____ LINE____ CHANGE____</p> <p>11 _____</p> <p>12 REASON_____</p> <p>13 PAGE____ LINE____ CHANGE____</p> <p>14 _____</p> <p>15 REASON_____</p> <p>16 PAGE____ LINE____ CHANGE____</p> <p>17 _____</p> <p>18 REASON_____</p> <p>19 PAGE____ LINE____ CHANGE____</p> <p>20 _____</p> <p>21 REASON_____</p> <p>22 _____</p> <p>23 _____</p> <p>24 John Horning Date _____</p> <p>25</p>